

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**PLAINTIFF**

**CALVIN E. PERKINS**

**VS.**

**3M COMPANY AND ARIZANT  
HEALTHCARE, INC.**

**FIRST AMENDED MASTER SHORT  
FORM COMPLAINT AND JURY  
TRIAL DEMAND**

1. Plaintiff, Calvin E. Perkins, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff is filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff, Calvin E. Perkins, is a resident and citizen of the State of Virginia and claims damages as set forth below.

3. ~~Plaintiff's Spouse, \_\_\_\_\_ is a resident and citizen of the State of \_\_\_\_\_, and claims damages as set forth below. [Cross out Spousal Claim if not applicable.]~~

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is the

United States District Court for the Western District of Virginia – Danville Division.

6. Plaintiff brings this action *[check the applicable designation]*:

  X   On behalf of himself;

           ~~In a representative capacity as the \_\_\_\_\_ of the  
\_\_\_\_\_ having been duly appointed as the  
\_\_\_\_\_ by the \_\_\_\_\_ Court of  
\_\_\_\_\_. A copy of the Letters of Administration for a  
wrongful death claim is annexed hereto if such letters are required for  
the commencement of such a claim by the Probate, Surrogate or other  
appropriate court of the jurisdiction of the decedent.~~

*[Cross out if not applicable.]*

### **FACTUAL ALLEGATIONS**

7. On or about April 4, 2013, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of his left shoulder hemiarthroplasty at the University of Virginia Health System, 1215 Lee Street, Charlottesville, Virginia 22903, by Dr. David Kahler, M.D.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”).

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has

undergone removal of prosthesis and placement of antibiotic spacer on February 18, 2015, and removal of antibiotic spacer and reverse total shoulder replacement on July 1, 2015, at University of Virginia Health System, 1215 Lee Street, Charlottesville, Virginia 22903, by Dr. Stephen Brockmeter, M.D. [*Cross out if not applicable.*]

### **ALLEGATIONS AS TO INJURIES**

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

  X   INJURY TO HIMSELF  
       INJURY TO THE PERSON REPRESENTED  
       WRONGFUL DEATH  
       SURVIVORSHIP ACTION  
  X   ECONOMIC LOSS

~~(b) Plaintiff's spouse claims damages as a result of (check all that are applicable): [*Cross out if not applicable.*]~~

~~===== LOSS OF SERVICES~~  
~~===== LOSS OF CONSORTIUM~~

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

### **DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

12. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference (check all that are applicable):

  X   FIRST CAUSE OF ACTION - NEGLIGENCE;  
  X   SECOND CAUSE OF ACTION - STRICT LIABILITY;

- X          FAILURE TO WARN
- X          DEFECTIVE DESIGN AND  
             MANUFACTURE
- X          THIRD CAUSE OF ACTION – BREACH OF EXPRESS  
             WARRANTY;
- X          FOURTH CAUSE OF ACTION- BREACH OF IMPLIED  
             WARRANTY OF MERCHANTABILITY LAW OF THE  
             STATE OF VIRGINIA §8.2-314;
- X          FIFTH CAUSE OF ACTION- VIOLATION OF THE  
             MINNESOTA PREVENTION OF CONSUMER FRAUD  
             ACT;
- X          SIXTH CAUSE OF ACTION – VIOLATION OF THE  
             MINNESOTA DECEPTIVE TRADE PRACTICES ACT;
- X          SEVENTH CAUSE OF ACTION- VIOLATION OF  
             THE MINNESOTA UNLAWFUL TRADE PRACTICES  
             ACT;
- X          EIGHTH CAUSE OF ACTION- VIOLATION OF THE  
             MINNESOTA FALSE ADVERTISING ACT;
- X          NINTH CAUSE OF ACTION- CONSUMER FRAUD  
             AND/OR UNFAIR AND DECEPTIVE TRADE  
             PRACTICES UNDER LAW OF THE STATE OF  
             VIRGINIA;
- X          TENTH CAUSE OF ACTION – NEGLIGENT  
             MISREPRESENTATION;
- X          ELEVENTH CAUSE OF ACTION- FRAUDULENT  
             MISREPRESENTATION;
- X          TWELFTH CAUSE OF ACTION – FRAUDULENT  
             CONCEALMENT;
- THIRTEENTH CAUSE OF ACTION – LOSS OF  
             CONSORTIUM; and

X  

FOURTEENTH CAUSE OF ACTION – UNJUST  
ENRICHMENT.

In addition to the above, Plaintiff asserts the following additional causes of action under applicable state law:

Violation of Virginia Consumer Protection Act of 1977 § §59.1-196 et seq.

Breach of Implied Warranty of Fitness for a Particular Purpose Law of the  
State of Virginia §8.2-315

*[Cross out if not applicable.]*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: April 3, 2019

Respectfully submitted,

**CALVIN E. PERKINS**

/s/ Randall T. Trost

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